
UTAH LABOR COMMISSION

JOY ANDREWS,

Petitioner,

vs.

WASHINGTON COUNTY SHERIFF,

Respondent.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 8-08-0063

Joy Andrews asks the Utah Labor Commission to review Administrative Law Judge Luke's dismissal of her complaint alleging the Washington County Sheriff discriminated against her in violation of the Utah Antidiscrimination Act, Title 34A, Chapter 5, Utah Code Annotated.

The Labor Commission exercises jurisdiction in this matter pursuant to Utah Code Annotated § 63G-4-301 and § 34A-5-107(11).

BACKGROUND

On November 9, 2007, Ms. Andrews filed a claim with the Utah Antidiscrimination and Labor Division ("UALD") alleging that the Washington County Sheriff (hereafter referred to as "the County") unlawfully discriminated against her based on her gender by firing her on November 27, 2006. After the UALD dismissed her claim for being untimely, she appealed that decision and requested an evidentiary hearing with the Adjudication Division. Judge Luke's dismissed the claim prior to a hearing based on Ms. Andrews' failure to file her initial complaint within the statutory time limit.

In her motion for review, Ms. Andrews argues that Utah Law requires litigants to exhaust all administrative remedies before seeking judicial review and therefore she was precluded by law from filing her claim with the UALD until the County completed its internal grievance process. In the alternative, she argues for equitable tolling of the filing deadline.

FINDINGS OF FACT

The Commission adopts Judge Luke's findings of fact. The facts relevant to the motion for review are as follows:

On November 27, 2006, Ms. Andrews was fired from her job. Ms. Andrews then initiated a review process of that decision through the County's internal grievance process. The County's final decision affirming her employment termination was dated September 14, 2007. She filed her complaint with the UALD on November 9, 2007.

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DISCUSSION AND CONCLUSION OF LAW

Under Section 34A-5-107 of the Utah Antidiscrimination Act, a claim for unlawful employment discrimination must be filed with the UALD within 180 days after the alleged discriminatory practice occurred.¹ Ms. Andrews filed her claim for discrimination 347 days after she was terminated from her employment, which is the alleged discriminatory employment practice. Thus, on its face, Ms. Andrews' claim is untimely.

Exhaustion of Administrative Remedies. In her motion for review, Ms. Andrews contends that Utah law prohibited her from filing with the UALD until she exhausted her administrative remedies with the County. However, there is no support for this argument. Utah law requires complainants to exhaust administrative remedies before pursuing **judicial review**, not for pursuing administrative relief such as filing a claim with the UALD. The UALD is an **administrative agency** authorized to investigate claims of discrimination as prohibited under the Utah Antidiscrimination Act; it has no statutory authority to perform judicial review of the County's decision. Therefore, to pursue a claim arising under the Act, Ms. Andrews should have filed her claim within 180 days after she was fired.²

Doctrine of Equitable Tolling. Next, Ms. Andrews contends that the Commission should apply the doctrine of equitable tolling to extend the filing deadline. Generally, equitable tolling in Utah has only been provided when there are "exceptional circumstances where the application of the general rule would be 'irrational' or 'unjust.'" Sevy v. Security Title Co., 902 P.2d 629 (Utah 1995). Usually this requires an initial showing that the claimant did not know and could not have reasonably known of the existence of the cause of action in time to file a claim within the limitation period. See Beaver County v. Property Tax Div., 128 P.3d 1187, 1194 (Utah 2006). Here, Ms. Andrews does not argue that she was not aware of her cause of action or that she had been unable to assert her rights, but rather that she pursued, in good faith, a different remedy for pursuing her discrimination claim. However, the statute specifically mandates a 180 day requirement for filing her charge and the Commission does not find that Ms. Andrews has shown exceptional circumstances that would result in an "irrational" or "unjust" application of the filing requirement. For the foregoing reasons, the Commission declines to apply the doctrine of equitable tolling to extend the filing deadline.

In summary, the Commission finds that Ms. Andrews failed to file her claim of

¹ By a cooperative agreement with the EEOC, the UALD also investigates claims for discrimination under Title VII of the Civil Rights Act, provided the claim is filed within 300 days. Since Ms. Andrews' claim exceeds both state and federal filing requirements, the Commission addresses the claim under state law.

² The Commission is not aware of any state law that would have prevented Ms. Andrews from pursuing her grievance with the County and filing her claim with the UALD at the same time.

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discrimination within the mandated statutory time and thus affirms Judge Luke's dismissal of the claim as untimely.

ORDER

The Commission affirms Judge Luke's decision to dismiss the claim as untimely. It is so ordered.

Dated this 26th day of November, 2008.

Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.

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